

## Lost in Transition: Puzzles of Reconciliation

*By Jón Ólafsson*

This paper discusses reconciliation as a strategy to heal social wounds caused by dictatorial regimes or deep economic crises. The paper treats two such examples: The failed attempts of the Icelandic government to reach a deal with the UK and the Netherlands about the repayment of debts incurred by the bankrupt Landsbanki Islands and the prosecution of Mr. Geir Haarde, formerly Prime Minister of Iceland. It is argued that although reconciliation strategies have in some cases been partially successful, it can be counterproductive to prefer moral aspirations or goals, such as rebuilding trust after serious political, social or economic disintegration, to strictly legal ways of dealing with individual cases. As the case with Mr. Haarde shows, the endeavor to achieve moral goals using legal means can backfire in unexpected ways.

### *1. Introduction*

The idea of reconciliation has emerged as an important dimension of transitional justice in the past decades. Programs in South-Africa and Rwanda aimed at reconciling populations and groups with a history of horrendous violence, even genocide, have been seen as at least partially successful (De Greiff, 2006). Similarly reconciliation programs have been managed in some Latin American countries as a part of an effort to deal with past dictatorships (Comissao Nacional da Verdade, 2014). The idea of reconciliation, as going beyond offering victims of fallen regimes to seek justice in an attempt to establish trust between different social (or ethnic) groups is somewhat paradoxical, since it seems to imply that victims conceive of themselves not only as victims but as somehow forced to seek partnerships with former perpetrators. When former perpetrators are offered rewards after periods of social conflict, violence, coercion or repression this becomes extremely difficult. While personal reconciliation seems to involve forgiveness, social reconciliation refers rather to amnesty: In return for acknowledging wrongdoing and telling the truth, perpetrators can sometimes expect milder treatment by courts or even be able to evade punishment altogether (Pankhurst, 1999). When such treatment is granted to perpetrators without

Jón Ólafsson  
School of Humanities  
University of Iceland  
E-mail: [jonolafs@hi.is](mailto:jonolafs@hi.is)

their victims' explicit assent, i.e. without their forgiveness, it may involve injustice towards them. When the victims are included and their assent required, social pressure and lack of alternatives may be the reason for their cooperation rather than genuine willingness to be reconciled with those who wronged them (see Burnet, 2008 which explores the Rwandan *Gacaca*). The main good brought about by reconciliation is the clear and unequivocal self-identification of the perpetrator – individual or collective – if even that is achieved. The problem is that to do so may require central liberal norms to be abandoned: Since from a liberal perspective the expression of dissent is an important sign of health in a liberal society, relations that require consensus are suspect. It is particularly dangerous from this perspective to base social solutions on consensus since consensus building on issues that have to do with rights and the interpretation of the past may easily translate into coercive forms of government. As I will argue in the paper this casts doubt on the possibility of reconciliation, at least if reconciliation is expected to go hand in hand with social construction based on liberal norms.

## *2. What reconciliation is and requires*

Before I turn to the examples I discuss in this paper, it is necessary, in order to provide context, to briefly review the relatively recent phenomenon of dealing with past atrocities with reconciliation programs rather than a commitment to hunting down and punishing perpetrators. The rationale of reconciliation when it partly involves providing an opportunity for guilty individuals to come clean and reconstruct their lives is the danger that conflict will otherwise continue. If perpetrators belong to a well-defined social group, whether ethnically or economically, it may simply be impossible to achieve both retributive justice and social peace (Pankhurst, 1999). It may therefore be a matter of utilitarian rationality to prioritize collective well-being over justice for individuals. For social reconciliation to work it must at least be possible to prioritize community values above individual rights. It must also be a generally shared view that reconciliation is necessary in the sense that without it the community in question will remain fragmented (Philpott, 2012).

While the South-African and the Rwandan cases are well known because of the great transitional effort they presented, reconciliation has also been seen as a necessary part of overcoming less serious crises where injustice appears in economic rather than in physical form and where perpetrators are bankers, businesspeople and politicians rather than military police and secret services.<sup>1</sup> Although clearly much less serious from both a judicial and a moral perspective, as I will argue in this paper, such cases evoke similar questions. In a situation where some are seen by themselves and others as victims, there is a need to identify perpetrators.

The central condition for reconciliation to be meaningful is that there are individuals ready to admit to their participation in wrongdoing and thus be identified as perpetrators (Lambourne, 2004). This would be facilitated by the offer of some kind of reward. There may also be present a desire to confess or recant regardless of reward. A reconciliation program might be conceived without issuing rewards, where telling the truth would be seen as e.g. an individual redemption. Where no reward is offered, desire to tell the truth may move individuals to talk – they may also not desire to do so. In short we can represent the situation in terms of four combinations of desire and reward:

Desire Reward	Desire No Reward
No Desire Reward	No Desire No Reward

Generally speaking if the first step in reconciliation is that perpetrators move towards recognizing themselves as such, the possible reward may be an incentive to do so, regardless of a desire to confess, which may or may not

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<sup>1</sup> The Icelandic Prime minister, as well as some other leading members of the leftist government in power 2009 to 2013 often applied vocabulary of transitional justice in the public comments. See Stothard, Michael. “Iceland: Recovery and reconciliation”, *The Financial Times* (29 May 2012). Available at <http://www.ft.com/intl/cms/s/0/8a0390dc-78c7-11e1-9f49-00144feab49a.html#axzz3NlNcHC9a>.

follow. This is also what is generally assumed when programs of reconciliation are proposed, i.e. that perpetrators do not and will not desire to confess but might be compelled to do so if offered a reward, especially when the reward is either amnesty or a reduced prison sentence. Regaining trust or respect may also be a strong incentive, but more difficult to guarantee (Cutter Patel, 2009).

An important question is also to what extent perpetrators can be collective actors such as groups, parties or even nations. Germans in the decades after WWII created official programs to achieve reconciliation internationally in a move that at least acknowledged collective responsibility although without formally doing so (De Greiff, 2006, p. 412). One may see its actions as expressing a collective desire to face and deal with past wrongdoing in order to regain trust but without any explicit form of reward.

There are interesting cases where individual perpetrators show a desire to tell their story in the absence of any guarantees of reward. In the documentary film *The Act of Killing* former torturer and executioner Anwar Congo and some of his gang members who participated in persecuting and murdering thousands of leftists in Indonesia in the 1960's describe their actions, even going into detail about the methods they used to kill their victims (Oppenheimer, 2012). In a recently published memoir Fyodor Mochulsky describes his time as a guard in Pechorlag – one of the prison camps in the Soviet Gulag (Mochulsky, 2010). Although the film and the memoir describe different times and places both are cases where participants in unspeakable brutality talk about their actions and explain their place in a repressive system. There are many other interesting cases of confessionals in memoir literature of course. One should therefore not dismiss the idea that there may be strong personal reasons for forming a desire to confess, tell the truth.

The memoir however brings to the fore another dimension of truth telling – sincerity. It can be a little difficult to draw a clear distinction between the desire to tell the truth on the one hand, and a desire to justify one's actions on the other. It is true of even the most horrendous crimes that perpetrators usually have a way of describing their actions as a normal part of an abnormal situation. This points to one additional difficulty in accepting

truths as presented by perpetrators: If there is reward, a story may be designed to reach the standard necessary to get the reward. If there is no reward, the desire may be to justify oneself rather than tell the truth.

A confession or recanting publicly made therefore may seem to need to fulfill one additional condition, i.e. to present a genuine attempt to reflect on, reinterpret and understand one's own past actions and decisions. This is a vastly more demanding enterprise than simply "telling the truth". True reconciliation, on this account, requires not only that former perpetrators tell their own story but that they actually listen to the stories told by their victims, or by those left behind by their victims. They must not only seek to reveal details of their actions, but also come to terms with having themselves made wrong choices – having committed acts that cannot be justified and having done so knowingly. This turns out to be a rather hard demand since most people, we can assume, seek to describe their actions in a context in which their choices become understandable and to some extent excusable, even if not justifiable.

One may conclude that substantial rewards will be necessary to achieve reconciliation not because only rewards can bring about desire or because there may not be other incentives for telling the truth, but because true reconciliation requires that victims and perpetrators join forces in reconstructing a common narrative of past injustices. In other words there must be a common moral project they can voluntarily engage in thereby abandoning their right or claim to other narratives. As we will see it is not obvious that this is achievable except in rare cases.

### *3. Reconciling an economically and politically broken society*

I will now discuss events in Iceland after the economic collapse of 2008 in the context of social reconciliation. Much public discussion in Iceland after the bankruptcy of its major financial institutions centered around the sense of betrayal brought about by the crisis, the widely shared view that key players in business and political life were guilty of serious wrongdoing, if not punishable by law, then at least morally unacceptable, and that a "social contract" had been broken (Gylfason, 2014; Ólafsson, 2009). The idea of a necessary social

reconciliation was a part of this way of seeing things and therefore also the question of what such reconciliation essentially is.

I will not give an overview of the crisis itself. Several narrative accounts of the events that preceded the crisis, the crisis itself and its aftermath do exist (see e.g. Bergmann, 2014; Árnason, 2010; Jóhannesson, 2009). What I will do here is discuss two cases that evoke meaningful questions about what reconciliation is, whether it is desirable and what is achieved by it. The first case involves questions about collective responsibility and eventually a dramatic refusal (by way of a national referendum) to admit such responsibility. The second case has to do with individual responsibility and a refusal by leading politicians to admit to wrongdoing. The cases were eventually resolved in the courts, but because of the concurrent public discussion of reconciliation, it is both instructive and important to understand them in that context.

After the financial collapse in Iceland in 2008 it was frequently argued that a full recovery would need much more than economic reconstruction. As public discussion and considerable grassroots activism very well showed, it was a common view that there was widespread corruption and wrongdoing behind the complete failure of the Icelandic government to prepare for and react to the international financial crisis which resulted in a disaster for a large part of the Icelandic population (Bernburg, 2014). Since the culprits of the collapse were bankers and financial leaders who had led the financial boom in the preceding years, these people were expected to show remorse and ask for forgiveness. As a rule they were also expected to be found criminally liable and thus to be punished in due time (Gylfason, 2013). In addition to this slightly naïve demand for remorse and punishment, a second argument was also frequently made by activists, according to which full reconciliation required also a thorough revision of pre-crash politics, and a renewal of “the social contract”. The second argument was not based on an alleged need for punishment, admission was emphasized instead and the need for some kind of a “truth commission”. The idea was floated that by offering some of the

bankers immunity, the truth about what was actually going on behind the scenes in the international financial companies in Iceland could be exposed.<sup>2</sup>

One of the moves by parliament in the aftermath of the crisis was to appoint a so-called Special Investigation Commission (SIC) to investigate both the government and the financial companies and write a report on policies and practices that could explain the extreme vulnerability of the Icelandic economy when the international crisis hit. The commission identified a number of areas where negligence, incompetence, corruption or fraud seemed to have played a role in how events later developed. The committee also indicated that a few government ministers and high-ranking officials could be held criminally responsible for their actions (or inaction) in the period leading to the crisis (Special Investigation Commission, 2010).

Even though pre-crash policies in Iceland were not characterized by wrongful arrests, killings or repressive measures, the feeling of deception and betrayal created a need for reconciliation. Reconciliation was expected to restore faith in the political system and of course in the political leaders whose careers were based on the traditional political parties. Thus reconciliation was seen as a moral recovery in which responsibility and accountability became key notions. The government would launch a number of initiatives designed to increase trust in the political leadership, make sure that it was clear that the

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<sup>2</sup> Truth commissions were discussed a lot for years after 2008 and it was frequently argued that the Special Investigation Commission was to be seen as such a commission was heard both before and after it delivered its report. The National Court which played an important role later on was by some also to be seen as such a commission. For some of the more interesting newspaper articles see Hermannsson, Birgir. “Um sannleiksnefnd” [About a Truth Commission], *Fréttablaðið* (26 March 2012). Available at <http://www.visir.is/um-sannleiksnefnd/article/2012703269952>; Helagson, Þorkell. “Sannleikurinn mun gera yður frjálsa” [The Truth will make you free], *Fréttablaðið* (29 September 2010). Available at <http://www.visir.is/sannleikurinn-mun-gera-ydur-frjalsa/article/2010993397543>; Bowers, Simon. “How Iceland's banking flaws brought down the country's economy”, *Guardian* (12 April 2010). Available at <http://www.theguardian.com/business/2010/apr/12/iceland-truth-commission-damning-report>.

central administration had learned its lesson and, last but not least, restore Iceland's international reputation.<sup>3</sup> The interesting dimension of that last part was that it seemed on the face of it to require the admission of some collective responsibility of Icelanders for the huge losses sustained by individuals and organizations in other countries. My first example is about such responsibility.

#### *4. Taking responsibility – or not: Icesave*

One of the greatest disasters of the 2008 crisis was the bankruptcy of Landsbanki Íslands. This bank, formerly state owned but privatized in 2002, had not long before the crisis launched a new kind of savings accounts in the UK and the Netherlands, which, because of the high interest rate offered on regular savings, was widely advertised as a huge success in the months before the crisis. When the bank fell thousands of customers, individuals, companies, NGO's and public organizations, lost the money they had put into these accounts, known by the name of Icesave. Since according to law, in case of a crisis, banking institutions are supposed to be able to recover possible losses of account holders up to a certain amount they are required to make payments to an insurance fund which should have enough to cover the total amount the bank would be liable to pay (Act 98/1999). Since only individual account holders, not organizations, have such guarantees and payments to each account holder are limited, it is not unreasonable that even in case of a total collapse a bank may fulfill its legal obligations.

The Icelandic insurance fund however was very far from being able to do so since the Icelandic banks had neglected their payments and the Icelandic government had failed to react. Therefore the governments of the Netherlands and the UK, as well as the European Union maintained that the Icelandic government was responsible and should provide the funds needed

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<sup>3</sup> This includes a permanent committee to strengthen ethical practices in ministries and public institutions. The committee which was called Coordination committee (Samhæfingarnefnd) led the creation of ethical codes and guidelines for the administration. See <http://www.forsaetisraduneyti.is/verkefni/sidareglur/>.



to pay the legally required compensation to individual account holders. The UK and Dutch governments paid the amount due to their citizens and subsequently made a claim on Iceland. The Icelandic government accepted this at first and negotiations started on how to repay the debt.

When the government submitted a bill to Parliament in the spring of 2009, which granted a permission to give Landsbankinn a state guarantee for paying back debts to the Dutch and British governments, resistance became visible (Act 96/2009). And as parliament discussed the proposed agreement, public dissatisfaction about this situation grew. There was considerable public discussion about how to proceed reflected partly in commentaries on the proposed legislation, solicited by the parliament committee responsible for amending the bill. According to the draft agreement the Icelandic government was liable to pay up to 6,5 billion USD a staggering amount for such a small nation (the inhabitants of Iceland are around 330.000 and the GDP in 2009 around 12 billion USD). The bank's assets were of course expected to cover a substantial part of this amount, but it seemed clear nevertheless that Icelanders would be paying a heavy price for the sins of their fallen bankers. No one could say in advance how much of the debt assets would cover and the interest would in any case be a substantial burden for Iceland.

The situation evokes questions about collective responsibility. Among the many technical and legal comments the parliament received, one prepared by a moral philosopher briefly caught the public attention. It argued in the following way: What consequences for the Icelandic public can be expected from the agreement? If it is taken for granted that the financial burdens accepted by the agreement are not too heavy, i.e. will not lead to national bankruptcy, one might assume that the experience will be a lesson from which the Icelandic public will not only learn, but from which its "moral strength" will be increased. The public will have to face considerable hardships and, so the argument goes, since these burdens will generally be understood as a consequence of former misjudgment the result will be a collective resolve not to do the same mistakes again. (Frímannsson, 2009).

There are premises for this view, both empirical and moral that have to be explored carefully:

1. National responsibility for this debt, even though resulting from incompetence or dishonesty of the bank owners, is accepted by at least a majority of Icelanders.
2. It is assumed that the public (at least a majority) will accept the agreement negotiated by the government and ratified by the parliament.
3. It is assumed that the public will accept this even in case a legal requirement for an obligation to pay may be disputed in court.
4. The public is assumed to largely share views on lessons to be drawn from the financial hardships.

I will ignore the empirical questions here, i.e. to what extent public opinion may or may not actually be in line with such assumptions, and focus on the moral questions:

- 1q. Is there a strong moral argument for accepting the responsibility of one society to compensate losses by private individuals in another country caused by the irresponsible behavior of owners and leaders of a private bank?
- 2q. Is there a strong moral reason for the public to accept a decision by their government to put them through considerable hardships because of such responsibility?
- 3q. Can the absence of legal requirement be seen as independent from the moral obligation?
- 4q. Why should we expect there to be similar views among the public about lessons to be drawn from the disaster?

As we can see 1q and 2q have similar characteristics, they are general questions about accepting responsibility and accepting a decision made by one's own government. The argument for answering 1q affirmatively is this:

Landsbankinn operated as an Icelandic bank in the UK and the Netherlands. It therefore fell under the jurisdiction of the Icelandic

government, which had an opportunity to regulate its operations in a way that would have prevented the disaster or at least its worst consequences. Icelandic citizens choose their leaders in democratic elections and thereby carry a responsibility for their actions on their behalf. It is therefore not unreasonable that if Landsbankinn was unprepared for its collapse and had not even collected a fraction of what was needed to fulfill legal obligations, the Icelandic government should be held responsible.

Similarly, for 2q, an affirmative answer seems to be on firm moral ground: A governmental decision may be unpopular. Since however citizens are morally responsible for the acts of their government and in a democratic society have all means to express their views, it is crucial that they see governmental decisions as binding. It is clearly quite important that the government make a strong case to defend its decision, but once it has been reached the discussion should not be about whether to fulfill the corresponding obligations but how. So if the government is acting within the limits of what is possible (not risking national bankruptcy) and is acting in order to fulfill moral or legal obligations the public must accept the result.

The answer to 3q is less clear. The relative harm caused by each course of action could be assessed from a utilitarian point of view, which might lead to the conclusion that the overall consequences provide a strong moral argument for assuming responsibility. But one might also argue that a moral obligation emerges from the specific duties citizens and governments have and that to honor such obligations must be ranked higher than their well-being i.e. given that it will not cause social collapse or state bankruptcy or something of that magnitude, which would have deep and lasting negative effects on Icelandic society. Thus the moral and legal obligations have similar limits: Future economic capacity. Only what can be done can be required.

For the moral argument described above 4q however is crucial. What are the lessons from the situation and why should Icelanders in general see it as the morally right course of action to shoulder this debt? If it is generally accepted that conditions 1, 2 and 3 are met, people can still be divided about the lessons. It might be that there should be better rules, or that they should be enforced more systematically. But they might also be about more modest

ambitions: Never allow the banks to become so big, or it might be: Make sure that if the state is to be held responsible, adequate measures are taken to ensure its interests in case the bank fails. And so on.

A negative answer to 4q (and such an answer seems inevitable) illustrates a certain truth about reconciliation. In order that a society can draw “lessons” from common hardships we must assume a more narrow range of public reasoning and discussion than liberal democratic society requires. But such disagreement reflects back on the answers to 1q, 2q and 3q: The presence of strong moral reasons to accept responsibility, governmental decisions on how to deal with it and that moral reasons may be strong enough to go beyond legal obligations does not mean the absence of legitimate disagreement about these answers. What remains is the much weaker argument that by negotiating the Icelandic government would be resurrecting some of the country’s lost international reputation. But since international reputation is a questionable commodity, it would in fact seem that the government was simply acting to identify Icelanders collectively as perpetrators without there being any visible reward for doing so.

The Icesave dispute ended without any agreement. Three times the government submitted a bill to parliament on the terms of agreement with The Netherlands and the UK. First parliament rejected the bill, but the second and the third bill, both of which were passed by parliament, were voted on in referendums after a presidential veto. In both cases they were rejected (Bergmann 2014). Eventually the EFTA court ruled on the legal issues involved that Iceland was indeed not liable in this case and only what could be covered from the ruins of the bankrupt Landsbankinn could be used to cover these debts (see Case E-16/11 - EFTA Surveillance Authority v Iceland).

##### *5. Prosecuting the Prime minister*

A second much debated move by the Icelandic parliament after the release of the SIC report, was to use the existing law and seek to prosecute some of the ministers of the government that had come to office in 2007 and was in power in the fateful year of 2008. According to the law, the parliament may

decide to prosecute government ministers or other high officials for wrongdoing while in office. In such cases a special court – the National Court – is appointed where 12 judges determine guilt or innocence (Act 3/1963, Act 4/1963).

The SIC had by some commentators been described as a “truth commission” or at least as a commission tasked with bringing out the truth rather than seek culprits. The commission did not directly recommend prosecution but pointed out that three ministers of the previous government and at least three high ranking officials could, according to the law, be prosecuted and brought trial before the National court. Later a Parliamentary committee recommended that four ministers of the previous government be prosecuted (Skýrsla þingmannanefndar, 2010).

It seems that politicians who supported this move considered it to be reconciliatory in the sense that by showing willingness to actually use the law to bring former political leaders to trial for their actions – or negligence – before the crisis, the political establishment would accept responsibility, and in this sense prosecution would contribute to restoring trust in government (see Málshöfðun gegn ráðherrum). Opponents conceived quite differently of the whole exercise, seeing it as nothing more than willingness to go to the extremes in humiliating members of the previous government (Omzigt, 2013; Backman, 2013).

The Icelandic Parliament voted on 28 September 2010 on four different proposals to prosecute the former Prime minister (fPM), the former Finance minister (fFM), the former minister of Banking and Trade (fBTM) and the former minister of Foreign Affairs (fFAM). Before the voting it was clear that MP’s were divided on the issue. For some MP’s it was a difficult choice to support prosecuting former colleagues and friends. The outcome however was surprising to many observers. While the Parliament decided not to prosecute three of those four former ministers, it did vote to prosecute the

former Prime minister. As the media reported he was “singled out” as the main or in fact only the culprit among politicians for what had happened.<sup>4</sup>

This result of the voting did almost certainly not reflect the will of the majority of parliamentarians, but the decision only to vote separately on the each person created conditions where the outcome as a whole could contradict majority opinion. Table 1 shows the number of votes for and against prosecuting each minister:

<b>TABLE 1</b>	For	Against	Abstentions
fPM	33	30	
fFAM	29	34	
fFM	31	32	
fBTM	27	35	1

One and a half year later the National Court announced its judgement in which the former Prime Minister Geir Haarde was found guilty of one of four charges brought against him. While the court argued that Mr. Haarde could not be held responsible for the crisis in Iceland, his negligence in holding special ministerial meetings to discuss and deal with the financial situation in the months preceding it, was found to amount to criminal negligence. Although he was found guilty the court decided not to punish him and the costs of the trial, including Mr. Haarde’s defense were paid by the state (Landsdómur 2012).

Geir Haarde is the only politician who has been found guilty of a criminal offense due to the financial crisis. Although his violation may seem small – nothing more than a formality – a closer reading of the judicial argument shows that it covers wide-ranging criticism. Thus it can be argued that the court found Mr. Haarde culpable in many ways, which it addresses in its verdict, yet could only convict him on a technical issue.<sup>5</sup>

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<sup>4</sup> I am using the coverage of the daily DV for the figures and overview of the voting. See Guðbrandsdóttir, Kristjana. “Geir einn í snörunni”, *DV* (29 September 2010), 1-3.

<sup>5</sup> Unfortunately the verdict (Landsdómur 2012) has not been translated in to English.

Mr Haarde reacted aggressively to his conviction and in a number of interviews he derided the court's argument calling his conviction ridiculous. He seemed to have considerable public support and in the days after the court concluded, the public seemed split on whether this whole thing had been a good idea or not. If the idea had been that some justice could be found by actually prosecuting one of the leading politicians of the pre-crisis era, and that a careful consideration of all arguments by a court would lead, if not to a consensus then at least to some closure, that was fully rebutted, no reconciliation came out of the affair. It rather increased tensions and hostility between supporters of the post-crisis government and those people and movements that had been in power before the crisis.<sup>6</sup>

Part of the reason can be seen from an analysis of the vote itself. The Icelandic Parliament has 63 MP's. Of those 30 voted against prosecuting any of the former ministers, while 26 voted for prosecuting all of them. 7 MP's wanted to prosecute some but not all. If we assume that those voting to prosecute two or three of the former ministers would have preferred prosecuting no one to prosecuting only one we can also make some guesses at the possible preference rankings. The following table shows the breakdown:

<b>TABLE 2</b>		Ranking of options	Willingness to prosecute	Reluctance to prosecute	Political priorities
PM	2 (33)	1	4	5	3
Prosecute no one	30 (30)	2	5	1	1
fPM, fFAM,	4 (29)	3	3-4	3-4	4-5

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<sup>6</sup> The case was covered extensively by Icelandic news media. A general overview of events and announcements around the verdict can be found in *Reykjavík Grapevine* 5 2012, 3-17 May, p. 6-8. Accessible at [http://issuu.com/rvkgrapevine/docs/issue05\\_2012](http://issuu.com/rvkgrapevine/docs/issue05_2012).

fFM					
fPM, fFM, fBTM	2 (27)	4	3-4	3-4	4-5
Prosecute all	25 (25)	5	1	2	2

If we simply rank the options from the point of view who was included we get a corresponding order where all those who voted to convict the former Prime minister also prefer the outcome where he is prosecuted to any other outcome. Given the public debates on the four cases however, where it was frequently pointed out that prosecuting only the former Prime minister was unfair, it is quite likely that the preference ranking is not properly reflected in the actual outcome.

Let's first assume that parliamentarians are governed by a willingness to prosecute in the sense that they are more willing to accept an option where someone they do not want prosecuted is, than the option where someone they want prosecuted is not. In such a case the option to prosecute no one will clearly be lowest but, interestingly, the winning outcome (only one prosecuted) comes next, number 4. If one assumes, on the other hand, that the parliamentarians are governed by a reluctance to prosecute in the sense that they will prefer an outcome where someone they want prosecuted is not, to an outcome where someone they do not want prosecuted is, the ranking reverses with respect to no one or everyone: Now, it seems, the option to prosecute no one would be ranked first, and the winning outcome, where only Mr. Haarde is prosecuted is actually the lowest ranking outcome. This conclusion is justified by the assumption that those reluctant to prosecute would still see it as more reasonable to prosecute all four than just some of them and would regard prosecuting only one of the four as unfair.

One can think of a third possibility, namely that parliamentarians are governed by certain political calculations, which would make them avoid prosecutions if they could, but are willing to agree to prosecuting someone to fulfill a public demand for doing so and in order to prove critics wrong about the tendency of politicians to stick together. In this case prosecuting no one



might be ranked first, prosecuting everyone would, again, come second. Given the hindsight of the fierce criticism that the actual result evoked, prosecuting three of the former ministers should be ranked above prosecuting only the former Prime minister. So once more we end with that outcome as ranking lowest.

Now the reason one can speculate about preference rankings as separate from the actual outcome of the voting is the fact that the parliamentarians voted on each individual case and therefore were not directly influenced by how they rated the general outcome. We can assume that at least 30 would always rate prosecuting no one highest and at most 33 would rate prosecuting someone above prosecuting no one. The question really is how many would prefer prosecuting no one to any combination other than their own. My guess is that very few of the MP's would have preferred prosecuting only the former Prime minister to prosecuting no one since there seemed to be a widespread agreement that prosecuting only him was not fair and therefore would not have the desired reconciliatory effect. Of course the MP's could have made deals before the voting to ensure that the outcome would not be as embarrassing as it was. But a lack of trust among them and deep disagreements about the process seems to have prevented that.

Before the parliament voted opinion polls showed consistently that Icelanders believed politicians should be prosecuted but found it unlikely that Parliamentarians would actually decide to go against their own in such a way. After the vote the public did not reward their politicians by supporting the decision to actually go after the Prime Minister, but turned against the decision. According to opinion polls, a majority considered the prosecution of Mr. Haarde and subsequent trial to be unfair.<sup>7</sup>

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<sup>7</sup> Þjóðarpúls Gallup 12. tbl. 18. árg., október 2010. According to this Gallup poll 83% of voters were not satisfied with only Mr Haarde being prosecuted. In another Gallup poll made during the trial the public seems to have formed opposed camps of equal size where one was fiercely opposed to the trial, the other supportive of it. Þjóðarpúls Gallup 15. mars 2012. Available at <http://www.capacent.is/rannsoknir/thjodarpulsinn/nr/1074>.

The whole exercise can fairly be described as a disaster, if the idea was that a fair trial could bring people together in reflecting on past mistakes and by making politicians accountable for their actions. The former Prime minister had previously completely refused to admit that he or his government could in any sense be held accountable for the economic collapse since the events in Iceland were simply a result of the international financial turmoil. Even though he was found guilty of criminal negligence, since the verdict was based on a technical issue, it carried limited weight.<sup>8</sup>

In an interesting way both parliament and the National court thus clearly failed in their moral aspirations because of the choice to test the limits of the law. Since the ministers could not be prosecuted collectively parliament had to vote on each of them individually and since the National court could only recognize culpability in terms of law-breaking the question of to what extent the government had failed morally could not really be addressed apart from the results of the SIC report.

## *6. Conclusion*

In this paper I have discussed two attempts to address past mistakes and wrongdoings in a way that might have led to some social reconciliation – which certainly was intended. Both failed in interesting ways. The Icelandic government's attempts to reach a deal with the Dutch and British governments on Icesave were met with resistance at home since to a great number of Icelanders it seemed wrong to accept the blame for the collapse of a private bank by agreeing pay its debts. The prosecution of the former Prime minister failed to create any consensus on ministerial responsibility since prosecuting him alone seemed to the majority of Icelanders simply to be unfair. In addition to that the parliament's handling of the case was

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<sup>8</sup> Mr Haarde subsequently appealed his case to the European Court of Human rights where it has been accepted for review, see Valdimarsson, Omar R. "European Human Rights Court Probes Haarde's Case Against Iceland", *Bloomberg* (26 November 2013). Available at <http://www.bloomberg.com/news/2013-11-26/european-human-rights-court-probes-haarde-s-case-against-iceland.html>.

symptomatic of inner divisions, strive and distrust rather than a broad effort to heal wounds caused by the crisis.

These examples not only show that reconciliation may be hard to achieve but also suggest that moral aspirations over and above legally achievable goals may be misplaced. Iceland resembled transitional societies, as the view was widespread that great injustice had been done which needed to be addressed through measures that went beyond what the established political and legal system could accommodate.

Social reconciliation may require unity of vision and moral purpose, which cannot be had in a liberal society where individual rights remain in the foreground. A liberal society not only imposes strict limitations on power to interfere with individuals. It also systematically prefers division to reconciliation since the expression of dissent indicates liberty rather than the expression of consent. Reconciliation requires consensual relations, which the liberal society continuously puts in doubt, and which are often associated with coercive forms of government rather than liberal. In both of these cases the government imposed certain solutions on citizens: The Icesave agreement was meant to reconcile Iceland with the rest of the world and the prosecution of the former Prime Minister symbolically to bring to a conclusion the discussion of how the government failed to respond to the crisis. In the first case certain mechanisms in the Icelandic constitutional structure made it impossible for the government to follow through on its policy, since the president was able to make the highly unusual move of abiding to demands by public groups and refuse to sign legislation passed by the parliament, which enforced a referendum on the issue not once but twice. In the second case the parliament decided to prosecute in a way that probably contradicted what even parliamentarians themselves considered fair and, even though conviction was achieved the public was left deeply unsatisfied with the result.

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